

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Mar 29, 2023**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRANDON KELLY ROOT,

Defendant.

No. 1:22-CR-02063-MKD

ORDER ACCEPTING GUILTY PLEA  
AND SETTING SENTENCING  
SCHEDULE

On March 28, 2023, Brandon Kelly Root appeared before the Court and entered a plea of guilty to Counts 3 – 6 of the Indictment filed on June 7, 2022, charging him with involuntary manslaughter within the exterior boundaries of an Indian reservation, in violation of 18 U.S.C. §§ 1153 and 1112, and assault resulting in serious bodily injury within the exterior boundaries of an Indian reservation, in violation of 18 U.S.C. §§ 1153 and 113(a)(6), all Class C felonies. Defendant was represented by Alex B. Hernandez. Assistant United States Attorney Michael Murphy appeared on behalf of the United States.

ORDER ACCEPTING GUILTY PLEA AND SETTING SENTENCING  
SCHEDULE - 1

1 The Court finds that Defendant is fully competent and capable of entering an  
2 informed plea, that Defendant is aware of the nature of the charges and  
3 consequences of the plea, and that the plea of guilty is knowing, voluntary, is not  
4 induced by fear, coercion, or ignorance, and is supported by an independent basis  
5 in fact establishing each of the essential elements of the crime. Therefore,  
6 Defendant's plea of guilty is accepted. However, the Court reserves ruling on the  
7 Rule 11 nature of the plea agreement until the time of sentencing.

8 Accordingly, **IT IS HEREBY ORDERED:**

9 1. A sentencing hearing is set for **July 11, 2023, at 3:00 p.m.**, in Yakima  
10 Courtroom 324. Absent truly exigent circumstances, the Court will not consider a  
11 request for a continuance of sentencing unless: (1) the request is made by written  
12 motion, (2) in accordance with LCivR 7, and (3) the motion and supporting  
13 declaration are filed at least seven (7) days before the scheduled sentencing  
14 hearing.

15 2. Following the Court's acceptance of the Defendant's plea of guilty,  
16 counsel for the United States orally moved for detention of Defendant. After  
17 hearing argument from counsel, taking into consideration Defendant's admission  
18 of a third pretrial release violation before Magistrate Judge Ekstrom at a hearing  
19 immediately preceding his change of plea hearing, the nature and circumstances of  
20 all three pretrial release violations in this matter, and Magistrate Judge Ekstrom's

ORDER ACCEPTING GUILTY PLEA AND SETTING SENTENCING  
SCHEDULE - 2

1 revocation of Defendant's pretrial release, the Court orally granted the motion and  
2 ordered the Defendant be remanded to the custody of the U.S. Marshals Service  
3 pending sentencing in this matter. **If a sentence of incarceration is imposed,**  
4 **Defendant shall remain in the custody of the U.S. Marshals Service.**

5 3. The United States Probation Office shall prepare a Presentence  
6 Investigation Report (PSR) pursuant to Fed. R. Crim. P. 32(c).

7 4. Not later than **June 6, 2023**, the Probation Officer shall disclose the PSR  
8 to Defendant, counsel for Defendant, and the United States. Disclosure of the PSR  
9 shall be subject to the limitations imposed by Rule 32 of the Federal Rules of  
10 Criminal Procedure.

11 5. Within 14 days of the disclosure of the PSR, counsel shall communicate  
12 in writing to the Probation Office (and opposing counsel) any objections they may  
13 have as to legal and factual errors or omissions; sentencing classifications;  
14 sentencing guideline ranges; and policy statements contained in or omitted from  
15 the report. Objections shall be numbered and identify the paragraph(s) to which  
16 the objection applies. Objections shall address the PSR in sequential order,  
17 beginning with the lowest numbered paragraph. If an objection is filed, the  
18 Probation Officer shall conduct such additional investigation as is necessary to  
19 assess the merits of the objection.  
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1           6. The Probation Officer shall submit the final PSR to the Court by **June**  
2 **30, 2023**. The PSR shall be accompanied by an addendum setting forth any  
3 objections counsel may have made, including those that have not been resolved,  
4 together with the officer's comments and recommendations thereon. The  
5 Probation Officer shall certify that the contents of the report, other than the  
6 sentencing recommendations, including any revisions or addenda, have been  
7 disclosed to counsel for Defendant and the United States, and that the addendum  
8 fairly states any remaining objections. Except with respect to any written objection  
9 made as required above, the PSR and computations shall be accepted by the Court  
10 as accurate. Upon a timely objection by Defendant, the United States bears the  
11 burden of proof on any fact that is necessary to establish the base offense level.  
12 The Court, however, for good cause shown, may allow that a new objection be  
13 raised at any time before the imposition of sentence. In resolving any disputed  
14 issues of fact, the Court may consider any reliable information presented by the  
15 Probation Officer, Defendant, or the United States.

16           Nothing in this Order requires the disclosure of any portions of the PSR that  
17 are not disclosable under Fed. R. Crim. P. 32. The PSR shall be deemed to have  
18 been disclosed: (1) when a copy of the report is physically delivered; or (2) one  
19 day after the report's availability for inspection is orally communicated; or (3)  
20

1 three days after a copy of the report or notice of its availability is mailed to  
2 counsel, whichever date is earlier.

3 7. Not later than **June 26, 2023**, counsel shall file and serve all motions and  
4 memoranda pertaining to Defendant's sentence, including departures and  
5 variances, and sentencing recommendations.

6 a. Counsel shall utilize the following format when preparing initial  
7 sentencing memoranda which are limited to 20 pages (absent prior  
8 Court permission to file an overlength brief): I. Offense Level &  
9 Criminal History, II. Departures, III. 18 U.S.C. § 3553(a).

10 b. Under Section I. Offense Level & Criminal History, counsel shall  
11 discuss whether the PSR's Total Offense Level calculations (not  
12 including departures) and Criminal History calculation are correct or  
13 incorrect, providing legal authority for the party's position.

14 c. Under Section II. Departures, counsel shall discuss whether a  
15 downward and/or upward departure is warranted under the Guidelines  
16 and provide legal authority for such position.

17 d. Under Section III. 18 U.S.C. § 3553(a), counsel shall discuss whether  
18 the resulting guideline range provides a reasonable sentence  
19 sufficient, but not greater than necessary to comply with the purposes  
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1 set forth in 18 U.S.C. § 3553(a)(2), considering the other factors listed  
2 in § 3553(a).

3 e. **FAILURE TO FILE AND SERVE SENTENCING MATERIAL**  
4 **BY THIS DATE, TO INCLUDE MOTIONS OR MEMORANDA**  
5 **FOR UPWARD OR DOWNWARD DEPARTURE, WILL BE**  
6 **DEEMED A WAIVER OF THE RIGHT TO DO SO.**

7 8. Not later than **July 5, 2023**, the opposing party shall file and serve its  
8 response limited to no more than seven (7) pages.

9 9. If Defendant intends to qualify for the safety valve, the parties must  
10 schedule a meeting to conduct a safety valve interview to determine if the  
11 Defendant has met the requirements of U.S.S.G. § 5C1.2(a)(5) **no later than June**  
12 **20, 2023.**

13 10. If either party intends to call witnesses or proffer exhibits at sentencing,  
14 witness and exhibit lists must be exchanged by the parties and provided to the  
15 Court no later **July 3, 2023.**

16 11. Sentencings shall be scheduled for a total of 45 minutes. If it is believed  
17 that the sentencing hearing will last longer than 45 minutes, counsel shall contact  
18 Chambers no later than **July 3, 2023.**

1           12. All pending motions pertaining to Defendant are **DENIED as moot** and  
2 all pending hearing and trial dates pertaining to Defendant are **STRICKEN** from  
3 the Court's calendar.

4           13. By and through this Order, the District Court Executive is authorized to  
5 accept Defendant's payment in the amount of \$100 per count, for a total of  
6 \$400.00, toward Special Penalty Assessments.

7           **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter  
8 this Order and provide copies to counsel, the United States Probation Office, and  
9 the United States Marshals Service.

10           DATED March 29, 2023.

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12                               s/Mary K. Dimke  
                              MARY K. DIMKE  
                              UNITED STATES DISTRICT JUDGE  
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